

BEFORE THE MAHARASHTRA REAL ESTATE
APPELLATE TRIBUNAL, MUMBAI
Appeal No. U-21
In
SC10000227

Mohammed Zain Khan
602, Gokul Harmony, Road No.1,
Sunder Nagar, Kalina,
Santacruz (East), Mumbai-400 098.

..Appellant

Versus

1. Emnoy Properties India,
A Limited Liability Partnership
incorporated under Limited Liability
Partnership Act, 2008, having its
registered address at 801, 8th floor,
Leo Apartments, Khar-(West),
Mumbai-400 052.
2. Mirza Yusuf Baig,
Partner of Emnoy Properties India and
Director of Valvan Valley Infrastructure Pvt.Ltd.
Having his address at Ann Villa, F/302, 3rd floor,
Plot No. 74/A, 30th Road, TPS 3, Bandra (West),
Mumbai 400 050.
3. Farhan Aashiq Khan
Partner of Emnoy Properties India, Having his
address at Shop No. 43, Dheeraj Heritage,
Upper Basement, S.V. Road, Santacruz (West),
Mumbai 400 054.

4. Valvan Valley Infrastructure Pvt. Ltd.
A Company incorporated under Companies Act, 1957, having its registered address
At 801, 8th floor, Leo Apartments,
Khar (West), Mumbai 400 052.
5. Khurshid Saifuddin Bohri
Director of Valvan Valley Infrastructure Pvt.Ltd.
having his address at House No.5,
Bohri Society, G Ward, Lonavala 410401
6. Moiz Bohri,
Director of Valvan Valley Infrastructure Pvt.Ltd.
having his address at House No.5,
Bohri Society, G Ward, Lonavala 410401
7. Bombay Supreme Developers,
Having his address at 801, 8th floor,
Leo Apartments, Khar (West),
Mumbai 400 052.
8. Rio Luxury Homes Pvt. Ltd.
A Company incorporated under Companies Act, 2013
having its Branch Office address at
Rio Group, 33rd Hill Road,
Opposite Marks and Spencer,
Bandra (W), Mumbai 400 050.



9. Riyaz Ramzan Somani,
Director of Rio Luxury Homes Pvt. Ltd.
having its Branch Office address at
Rio Group, 33rd Hill Road,
Opposite Marks and Spencer,
Bandra (W), Mumbai 400 050.

10. Seema Najarali Zaria
Director of Rio Luxury Homes Pvt. Ltd.
having its Branch Office address at
Rio Group, 33rd Hill Road,
Opposite Marks and Spencer,
Bandra (W), Mumbai 400 050.


.. Respondents

Mr. Neelesh Gala, Advocate for Appellant.
Ms. Shabnam S. Indorewala, Advocate for Respondent Nos. 1 to 7.
Mr. Naeem Mulg, Advocate for Respondent Nos. 8 to 10.

CORAM: INDIRA JAIN J.,CHAIRPERSON
S.S. SANDHU, MEMBER(A)

DATE: 09TH OCTOBER, 2019

JUDGMENT (PER : S.S. SANDHU)



This appeal is preferred by Complainant being aggrieved by the order dated 5th September, 2018 passed by Maharashtra Real Estate Regulatory Authority (MahaRERA) (for short, 'the Authority') in complaint No. SC10000227. By this order the Authority has declined the request of Complainant to give directions to Respondents to register the Valvan Valley

Project under Section 3 of the Real Estate (Regulation and Development) Act, 2016 (For short, "the Act")

2. The Parties in this appeal are referred as Complainant and Respondents as they were originally addressed in the Complaint proceedings before the Authority.
3. The grievance raised in this appeal by Complainant is concerned with two projects [subject project(s)] referred as the 'First Project' for Valvan Valley Project and the 'Second Project' for the Lion's Valley Project. As submitted by Complainant relevant facts in the matter in brief are stated as follows:
 - i) Respondent No. 1 is the original promoter of bungalow layout of the First Project through respondent Nos. 2 (Mirza Baig) and 3 (Farhan Khan). This project on land bearing R.S. No. 138 is spreadover more than 200 Acres in Kune Gram Panchayat of Maval Taluka, Distt. Pune and consists of 250 Non-Agricultural (N.A.) plots.
 - ii) The project, originally being executed by Respondent No. 1, was later on taken over by Respondent Nos. 4 (Valvan Valley Infrastructure Pvt. Ltd.) and its directors Respondent Nos. 2 and 5 (Khurshid Bohri). On being approached and represented by Respondent No. 1 through its directors Respondent Nos. 2 and 3 with the claim that they were developing a project with world class amenities and would provide clear and marketable title of the plot, the Complainant purchased Non-Agriculture Plot No. 13-B of ½ acre (22000 sq. ft.) in the 'First Project' for a cost of Rs. 55 lacs @250 ps. ft. An allotment letter signed by Respondent Nos. 2 & 3 was issued on 28th August 2012 on making advance payment of



Rs.12.50 lacs. Possession was to be given by 2014 but they deceitfully altered the same while executing Agreement for Sale (AFS) on 3rd February, 2014. As there was litigation for land title and possession was not given as promised, Complainant demanded refund of the paid amount.

- iii) On failing to refund the amount, Respondent Nos. 2, 5 and 6, who were executing the project, offered to sell and convey to Complainant smaller N.A. plot Nos. 33, 34, 35 and 36 admeasuring 522,442,442 and 442 sq. mtrs. respectively in the 'Second Project' (Lion's Valley) being developed by Respondent Nos. 7 and 8 subject to payment of balance amount of Rs. 42.50 lacs. This Project, consisting of 19 bungalows layout on land bearing S.No. 20/1 and 20/2 at Village Deoghar (Jambhulane), Lonavala in Mulshi Taluka is being promoted by Respondent Nos. 9 (Riyaz Ramzan Somani) and 10 (Seema Najarali Zaria). However, despite follow up Respondent Nos. 2, 5, and 6 failed to convey the said plots.
- iv) On the Act becoming effective from 1st May, 2017, Complainant sent an e-mail to the Authority on 6th November, 2017 requesting thereby for directions to register the project and to take action against the concerned Respondents for not registering the First Project under the Act. Pending action on the same, Complainant filed W.P. No. (L) 908 of 2018 before Hon'ble Bombay High Court.
- v) A statement was made by the Authority that after upgrading the systems in 15 days for filing online complaints, the Authority will deal with the complaints in relation to unregistered projects in the manner and in accordance with procedure being adopted for disposal of complaints with respect to registered projects under




the Act. In view thereof, the said Writ Petition was disposed of on 31st July, 2018. Pursuant thereto, Complainant filed online Complaint No. SC10000227. It was submitted by the complainant that while selling the N.A. plot to him, Respondent Nos. 2 and 3 had undertaken to obtain N.A. and other permissions to develop the said land for providing amenities as represented in the brochures of the project, allotment letter dated 28th August 2012 and the AFS dated 3rd February (hereinafter referred as relevant documents). The Respondent Nos. 2 and 3 denied the claims made by Complainant and stated that they sold only agricultural land to him. They also submitted that they have not obtained any permissions for undertaking development of the said land. After hearing the parties, the Authority held that the subject plot purchased by Complainant is an agricultural land as no competent Authority has so far granted any N.A. order or permission otherwise for development of the said land. It was further held that the subject project was not a real estate project and is therefore not liable for registration under Section 3 of the Act. Accordingly, the Authority dismissed the complaint vide impugned order passed on 5th September, 2018.

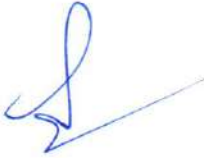
4. The present appeal has been filed to impugn the aforesaid order on grounds stated briefly as under:
- i) The impugned order passed without application of mind is contrary to the provisions of the Act and the undertaking given to Hon'ble High Court under order dated 31st July, 2018;
 - ii) The order is passed without allotting him to produce relevant documents so as to prove that Respondent Nos. 1 to 3 had sold the N.A. plots to him and had undertaken to obtain necessary N.A. and



other permissions for providing amenities as represented in the relevant documents;

- iii) The Authority has held the land under the project to be an agricultural land relying upon false claims and oral submissions of Respondent Nos. 2 & 3 and failed to consider relevant documents relied upon by Complainant;
- iv) The Authority did not interpret and apply Sections 2, 3 & 4 of the Act in proper perspective and erroneously held that the Valvan Valley Project is not a real estate project under Section 2 of the Act;
- v) The Authority did not consider to impose penalty under Section 59 of the Act on Respondent Nos. 1 to 3, for having failed to perform their obligations and responsibilities and register the First Project under Sections 11(4) and 3 respectively of the Act being promoters of the said project;
- vi) The Authority failed to consider that Complainant's case is a fit case for reliefs under Section 12 of the Act as the Respondents Nos. 1 to 3 made false and incorrect representations in respect of this Project and they were liable for penalty up to 10% of the project cost;
- vii) Contrary to the undertaking given by the Authority to Hon'ble High Court in W.P. No. (L) 908, by holding the project not liable to be registered under the Act, the Authority gave no opportunity to the Complainant to file a separate complaint under Section 12 & 18 read with Section 31 & 71 of the Act for return of the amount paid with interest and compensation;
- viii) The Authority failed to give directions to register the Second Project (Lion's Valley) under Section 3 of the Act where plots/bungalows are being marketed, promoted, sold etc. by the Respondent Nos. 7 & 8.



5. Based on the above grounds, following reliefs have been sought by Complainant in this appeal.
- i) To allow appeal and quash and set aside the impugned order after examining its legality, propriety and correctness.
 - ii) To impose penalty on Respondent Nos. 1 to 6 under Section 59 of the Act for non-registration of the First Project.
 - iii) To direct Respondent Nos. 7 & 8 to register the Second Project under Section 3 of the Act and impose penalty on them under Section 59 of the Act for non-registration of the project.
 - iv) To allow Complainant to file fresh complaint before the Authority against Respondents under Sections 12 & 18 read with Sections 31 & 71 of the Act with directions to the Authority to decide the same as per provisions of the Act and order of the Hon'ble High Court dated 31st July, 2018.
 - v) To grant interim relief by restraining Respondent Nos. 1 to 6 from in any way marketing, promoting or selling any plot/bungalow in the First Project and to restrain further Respondent Nos. 2, 5, 6, 8, 9 & 10 from carrying out any construction/development, marketing, selling etc. of any plot/bungalow in the Second Project unless the above projects are registered under the Act.
6. With the aforesaid background, parties were heard extensively on various dates so as to afford them full opportunity in the interest of natural justice. We may, therefore, now proceed to record and consider various submissions put forth by the parties in assailing and defending the impugned order.
-  7. Learned Counsel appearing for Complainant reiterated and submitted in greater length the grounds for challenge summarised

in Para 4 hereinabove and assailed the impugned order for not considering his submissions in proper perspective. He submitted that-

- i) On representation by Respondent Nos. 2 and 3 that they were developing the First Project with world class amenities as enumerated in brochures of the First Project, Complainant purchased an N.A. Plot. As may be ascertained from the brochures, allotment letter dated 28th August 2012 and agreement for sale dated 3rd February exchanged between them, the above Respondents had promised and undertaken to obtain N.A. and other permissions from the concerned authorities to develop amenities shown in the relevant documents as above.
- ii) For the reason of failure to hand over the possession of the said plot, as promised and litigation about the title of land under the First Project, complainant sought refund of the amount paid. Upon this, in lieu of the plot he purchased, he was offered 4 smaller N.A. plots by Respondent Nos. 2, 5 and 6 in the Second Project which is a layout of 19 bungalow plots. But the Respondents failed to convey the said 4 plots. Accordingly, the Complainant approached the State Consumer Dispute Redressal Commission (State Commission) for necessary reliefs. The State Commission vide interim order dated 9th May 2017 restrained the concerned Respondents from in any way transferring the said plots.
- iii) In the meanwhile, the Act came into effect on 1st May 2017. Considering the nature of the non-agricultural developments/amenities illustrated in relevant documents, the First Project being a real estate project was required to be compulsorily registered under Section 3 of the Act but was not



so registered. Therefore, Complainant made online complaint to the Authority on 6th November, 2017 seeking registration of the subject project and imposition of penalty for its non-registration. Pending the same with the Authority for action against this unregistered project, Complainant filed Writ Petition No.(L) 908 of 2017 for seeking directions to the Authority for putting the mechanism in place for dealing with complaints against unregistered projects.

- iv) The above Writ Petition was disposed of vide order dated 31st July 2018 upon a statement by the Authority that on upgradation of the system within a period of 15 days, the Authority will entertain complaints from the Complainant and deal with them in accordance with the procedure being followed in respect of registered projects.

Accordingly, the Complainant filed the complaint which came up for hearing on 5th September, 2018. The Complainant made submissions that the said project was a real estate project and the Respondent Nos. 2 and 3 had promised to obtain all necessary permission for providing amenities as shown in the relevant documents. The Authority did not allow him to submit the said documents so as to prove his claim. On the contrary, the Respondents 1 to 3 made oral and false submissions that that they had sold only agricultural land to the Complainant and neither undertook to obtain N.A. permissions nor have obtained such permissions so far. Relying merely upon the said fraudulent submissions, the Authority came to an erroneous and bizarre conclusion that since there was no N.A. order or other permissions from competent authorities for development of land purchased by Complainant, the said land is an agricultural land.

Consequently, the Authority erroneously held that the First

Project is not as a real estate project as defined under Section 2 (zn) of the Act and therefore the same cannot be registered under Section 3 of the Act. In addition, the Authority also held in Para 13 of the order that in terms of judgment of Hon'ble High Court, Bombay in W.P. No. 2737 of 2017 dated 6th December, 2017, the provisions of the Act are applicable to the registered Projects only.

The above view taken by the Authority that in the absence of necessary permissions, the subject project does not fall under the said definition of real estate project is completely erroneous and without appreciating and applying the provisions of Sections 2, 3 and 4 of the Act in their proper perspective. It is no where mentioned in the Preamble, Chapter 1 and particularly in Section 2 of the Act that real estate project means a registered project only. If such a view as held by the Authority is accepted and non-performance of various obligations cast on the promoter under Section 11(4) of the Act is ignored, the entire scheme and purpose of enacting the Act will be rendered nugatory and infructuous.

- v) While coming to the conclusions as above, the authority failed to consider and ascertain from the relevant documents that the said project is a real estate project within the meaning and definition under Section 2(zn) of the Act. Therefore, having promised to provide the said amenities as represented in the relevant documents, it was binding and obligatory on Respondent Nos. 2 and 3 to perform respective obligations under Section 11(4) and obtain all such permissions as are mandated under Section 4 of the Act for registration of the project. Failure to obtain necessary permissions, as promised for undertaking various non-agricultural developments after selling



the N.A. Plot as represented in relevant documents amounts to making false and incorrect representation under Section 12 of the Act. For this, the Authority ought to have imposed penalty up to 10% of the project cost on the said Respondents. In addition, the Authority should have allowed the Complainant to make separate application to seek refund of the paid amount of Rs. 12.50 lacs along with interest and compensation.

- vi) The Authority, without allowing the Complainant to produce the aforesaid relevant documents on record so as to prove that the subject projects are real estate projects and that the respondent had undertaken to necessary permissions, passed the impugned order in violation of the procedures laid down under Rule 6 of the Maharashtra Real Estate (Regulation & Development) Rules, 2017 (hereinafter 'the Rules 2017').
- vii) Complaint was filed to seek directions for imposition of penalty on Respondents under Section 59 for non-registration of subject Projects and for affording opportunity to Complainant for seeking refund with interest and compensation under Section 12 and 18 read with Section 31 and 71 of the Act. The said reliefs have been denied by the Authority by holding that the subject Project is not required to be registered and that the provisions of the Act are applicable to the registered Projects only. This view of the Authority is contrary not only to the provisions of the Act submitted as above but also to its own undertaking given in the W.P. No. (L) 908 of 2018 that complaint in respect of unregistered Projects would be dealt with in accordance with the procedure adopted by the Authority in respect of disposal of complaints in relation to the registered projects.



viii) The Lion's Valley Project (Second Project) being developed and promoted by Respondent Nos. 7 and 8 is a bungalow layout having 19 plots as admitted by Respondent Nos. 8 to 10 in Para 3 of their written statement submitted on 17th June, 2019. From the deed of conveyance annexed to written statement submitted by above Respondents it is seen that the land S.Nos. 20/1 and 20/2 pertaining to the Second Project is an N.A. land. Respondent Nos. 2, 5 and 6 had offered to convey four smaller N.A. Plots in this project in lieu of the plot purchased by the Complainant.

Even though the Respondent Nos. 8 to 10 claim that they are developing and are concerned only with Plot No. 24 under development agreement with one Rafiq Ramzanali Somani, the email dated 3rd April, 2019 from the broker MakaanAurDukaan reveals that a builder with the name of Rahim Somani had constructed four other Villas also in the same layout. It may be seen from photographs/brochure of the project submitted on record by Complainant and the website of Respondent No. 8 that Respondent Nos. 8 to 10 are offering sale of 19 bungalow in this Project.

The above project is compulsorily registrable under the Act. But the Authority did not consider submissions made by Complainant and failed to give directions for registration of the Project and imposition of penalty up to 10% of the project cost on Respondent Nos. 2,5,7,8,9 and 10 who are jointly promoting this project.

Even the Plot No.24 itself admeasures 7400 sq.ft. as mentioned in clause 2 of the agreement between the said



owner Rafiq Somani and Respondent Nos. 8 to 10 submitted along with written submissions filed on 12th March, 2019. The area of this Plot being more than 500 sq. mtrs., the same is also independently liable to be registered under Section 3(2)(a) of the Act.

- ix) The documents submitted on record in these proceedings such as snapshots, brochures etc. taken/downloaded from websites like '99acres.com', 'Quickr Homes' etc. and photographs taken personally by Complainant substantiate that the subject projects continue to be developed and marketed even today in violation of restraining order dated 20th December 2018 of this Tribunal and without registration under the Act. For this, necessary penal action is required to be taken against the concerned Respondents in addition to getting the subject projects registered under the Act.

In view of the above arguments, the learned Counsel submitted that the impugned order be quashed and set aside and reliefs be granted as prayed for.

8. Per contra, Respondent No. 2 submitted his say in the matter on behalf of Respondent Nos. 1,3,4,5,6 and 7, being partner of Respondent Nos. 1 and 7 and Director in Respondent No. 4 to counter the contentions of Complainant. In the written and oral submissions put forth on various occasions the learned Counsel for Respondent Nos. 1 to 7 submitted and argued as follows:

- i) This Tribunal has no jurisdiction to entertain this matter pertaining to the alleged unregistered First Project comprising



- of an agricultural piece of land bearing Plot No. 13-B, R.S. No. 138 of which the Complainant was aware of being an advocate.
- ii) The appeal is barred by law of limitation as per Section 44(2) of the Act as the same is filed beyond 60 days. No application or pray to that effect in appeal memo is submitted by Complainant for condonation of delay of 95 days from the date of receipt of impugned order on 13th September, 2018 and therefore, appeal deserves to be outrightly rejected.
 - iii) The appeal suffers from non-joinder/misjoinder of parties as Complainant's mother who jointly purchased the suit plot is not made a party either in the Complaint or in this appeal and the Respondent Nos. 1 to 7 are not the owners of the subject smaller plots as per land records.
 - iv) From the very beginning, the Complainant has been grossly misleading the Authority as well as this Tribunal by claiming in every document that he 'purchased a N.A. plot for Rs. 55 lacs' in 2012. The fact is that he booked an agricultural plot for Rs.55 lacs by paying a token amount of Rs. 12.50 lacs only. As recorded in the impugned order, after due examination of documents, the Authority has clearly accepted and held that the said plot is an agricultural land since no permission by way of N.A. order or otherwise is granted till date by any competent Authority for development of the said land. The Authority therefore has rightly and judicially held that the said plot/project without N.A. order cannot be registered under the Act.
 - v) The alleged unstamped/unregistered agreement dated 3rd February, 2014 for evidencing the sale transaction of the subject plot is of no legal value and has also since been cancelled following deliberations between the parties. Consequently, Rs. 9 lacs out of the paid amount of Rs. 12.50 lacs have already



been duly refunded to Complainant's father and brother-in-law through bank accounts on instructions from the Complainant. The Complainant has concealed this fact from the Tribunal. The Respondent No.2 is ready to refund the balance amount as has been submitted in the dispute before the State Consumer Dispute Redressal Commission (State Commission).

- vi) Respondent Nos. 1 to 7 deny claim of the Complainant that on failing to refund the paid amount, Respondents have ever offered to sell and convey four smaller N.A. Plot Nos. 33 to 36 to Complainant in Lion's Valley Project. Respondents are not the owners of the aforementioned plots and the Complainant has failed to submit any proof in support of his claim.
- vii) Respondent Nos. 1 to 7 are in no way connected to Respondents Nos. 8 to 10.

In support of the averments made in sub-paras (v) and (vi) above, the learned Counsel for Respondent Nos. 1 to 7 filed an application on 17th July 2019 to allow certain additional documents such as emails, Whatsapp Chat, 7/12 extracts etc. on record.

- 9. The learned Counsel appearing for Respondent Nos. 8 to 10 submitted written statements/submissions and additional arguments on various dates and made oral submissions too. He submitted that-
 - i) Even though these Respondents are shown as parties in the impugned order, they were neither given any notice nor had a chance to appear in the complaint proceedings. They came to know for the first time about non-registration of Lion's Valley bungalow Project only on receipt of notice from this Tribunal in the present proceedings.



- ii) The appeal deserves to be dismissed at threshold as the same is filed beyond stipulated time without filing any application/prayer for condonation of delay.
- iii) There is no privity of contract between Respondent Nos. 8 to 10 and the Complainant. Contention of the Complainant that Respondent Nos. 7 & 8 are jointly developing the Second Project is completely false and baseless. They have no nexus with Respondent Nos. 1 to 7 either. Also, Respondent Nos. 8 to 10 are not carrying out any construction on four smaller N.A. plots jointly with the Bombay Supreme Developer (Respondent No. 7).

These respondents are concerned only with development of Plot No. 24 admeasuring 353 sq. mtrs. under Development agreement with owner of the said plot, Mr. Rafiq Ramzanali Somani who purchased the same from Respondent No. 4 by registered conveyance deed on 28th July, 2017. The said plot being less than 500 sq. mtrs. is not liable for registration under relevant provisions of the Act. This, therefore, falls outside the jurisdiction of this Tribunal. Relevant documents relating to above transactions have been filed on record and Complainant has not denied or controverted the contents thereof in the rejoinder filed by him on record.

- iv) Respondent Nos. 8 to 10 are not at all concerned with the Lion's Valley Project and have not authorised third party/brokers such as .99acres, magic bricks or any other agencies to promote the Second Project as alleged. No evidence to that effect is submitted by Complainant.
- v) The documents relating to development and marketing of Lion's Valley Project such as emails, photographs etc. by the Complainant submitted for the first time in the appeal proceedings did not form part of the complaint proceedings and



therefore the same cannot be and should not be allowed being inadmissible as per law.

10. After careful consideration of rival submissions of the parties and on perusal of documents on record, we find the core controversy that lies in a narrow compass in this appeal is whether the Valvan Valley and Lion's Valley projects (subject projects) are liable to be registered under Section 3 of the Act. In that view of the matter, in this order we propose to deal only with the averments and submissions of the parties that are relevant to the said controversy. However, it may be noted that two seriously contested issues cropped up during the hearing concerning delay in filing the instant appeal and application by Respondent Nos. 1 to 7 for filing additional documents on record. It will be therefore appropriate to examine these issues prior to deciding the substantive issues relating to the registration of the subject projects. Accordingly, we prioritise and list the following issues for our consideration and determination.

ISSUES	FINDINGS
1) Whether the appeal is barred by limitation?	Yes
2) Whether the application of Respondent Nos. 1 to 7 for adducing additional documents is required to be allowed?	No
3) Whether Valvan Valley (First Project) is liable to be registered under the relevant provisions of the Act, 2016?	No



- | | |
|--|--------------|
| 4) Whether Lion's Valley (Second Project) is liable to be registered under the relevant provisions of the Act, 2016? | As per order |
| 5) Whether order under challenge calls for interference in this appeal? | No |

Our findings against the above issues for the reasons as stated hereinafter are as under:

11. First of all, we deal with the issue regarding delay in filing appeal.

- i) Respondents in unison have seriously contended that there is an apparent delay of 95 days in filing the appeal on 18th December 2018 after receiving the impugned order admittedly on 13th September, 2018. Respondents further contended that no sufficient cause is made out for the delay condonation by filing an application or making a specific reference to that effect in the appeal memo. They pleaded therefore to reject the appeal being time barred.
- ii) In response, the learned Counsel for Complainant admitted that the appeal was required to be filed by 13th November, 2018. He submitted that accordingly his appeal was ready to be filed on 12th November, 2019 as is evident from the relevant entry made in the Notary's Register. On encountering problem in filing appeal online, he sent an email dated 12th November, 2017 to seek guidance from the Tribunal's Helpdesk and in reply he was informed on 14th November that he cannot file appeal against the Source Complaint.



In above circumstances, Complainant had to file the Writ Petition NO. (L) 3991 of 2018 before the Hon'ble High Court, Bombay. Consequent to a statement made by the Authority that the Complainant can file the appeal, the Hon'ble High Court disposed of the said Writ Petition on 14th December 2018 by permitting him to file the appeal. Accordingly, the period of limitation has to be construed from 14th December, 2018. Learned Counsel for Complainant argued that considering the above circumstances due to which he could not file the appeal in time and the fact that the appeal is filed on 18th December, 2018 after being permitted by the Hon'ble High Court vide order dated 14th December, 2018 there is no delay in filing the appeal and consequently there is no requirement to file application for condonation thereof.

- iii) The Tribunal made a pertinent query to Complainant to submit necessary Authority that supports his plea for exemption from filing application for condonation of delay in the given circumstances. In response, in his written as well as oral submissions learned Counsel for Complainant invited our attention to the aforesaid circumstances and sought us to consider applying in his case the 'doctrine of impossibility' in terms of the established principles that the law does not compel the man to do what he cannot possibly perform (**Lex Non Cogit Ad Impossibilia**) and that none should be prejudiced due to the fault of the Court (**Actus Curiae Neminem Gravabit**). In support of his contentions for the applicability of these principles in his case, he relied upon judgements in (i) **Neeraj Kumar Sainy and Others Vs State of Uttar Pradesh and Others- (2017)14 SCC 136:2017 SCC Online SC 258**, (ii) **Kerala Transport Company Calicut Vs CR Anandavalli Amma**



and Others-1990 SCC Online Ker 82: AIR 1990 Ker 330: (1990) 1 KLJ 517: (1990) 1 KLT 643, (iii) Sangita Gupta Vs Steel Authority of India Limited-2015 SCC Online Jhar2025 : (2015) 145 FLR 1089.

Considering the aforesaid submissions of the parties, it is clear that the appeal has not been filed within 60 days as prescribed under Section 44(2) of the Act. The contention of the Complainant that there is no delay as the Hon'ble High Court has permitted him to file the appeal vide order dated 14th December, 2018 cannot be accepted for the simple reason that the said order only permits the Complainant to file the appeal and that too without prejudice to the rights and contentions of the parties. It neither condones the delay nor renders the delay condoned. Therefore undoubtedly the appeal is time barred.

As per proviso to Section 44(2), this Tribunal has the power to entertain appeal filed beyond limitation subject to satisfaction that sufficient cause is shown for not preferring appeal within time. Admittedly no application is filed to submit the sufficient cause for the delay. Despite pertinent queries from the Tribunal, Complainant has not submitted any Authority to substantiate that he is exempted from filing such an application. The authorities relied upon by him do not address this issue and therefore would be of no avail to Complainant for condoning the obvious delay. In such circumstances and in the absence of any application, the Tribunal has no occasion to consider and ascertain sufficient cause if any to condone the delay after hearing the parties.

Notwithstanding the above observations, considering the facts and circumstances in which the complainant was unable to prefer the appeal in time and consequently had to approach



the Hon'ble High Court, Bombay by filing the aforementioned Writ Petition, as an exception, we consider it just and proper to proceed with the matter and decide the appeal on merits so as to advance the cause of substantial justice rather than shutting the doors of justice by rejecting the appeal on technical grounds.

12. The Second issue to be decided pertains to application filed by Respondent Nos. 1 to 7 on 17th July, 2019 as referred at the end of Para 8 above for allowing additional documents on record in support of certain contentions. Complainant has vehemently opposed the application for taking the said documents on record. On careful examination, we find that neither these documents were before the Authority for consideration nor they are material and directly relevant for deciding the core controversy in the appeal. Therefore, in our view, these documents are not required to be allowed at this stage as no prejudice will be caused to Respondents if the said documents are not taken on record.

In view of above, without going into examination of the submissions of the parties and without expressing any opinion on the purported relevance and admissibility of the said documents, we decline the request of Respondent Nos. 1 to 7 and dispose of the said application accordingly.

13. We now advert to examination of the third issue, which is at the core of main controversy relating to liability of the First Project to be registered under the Act. The details of this project have already been provided hereinabove. It is pertinent to note that the impugned order deals with this Project only.

- i) Main cause of grievance of the Complainant as made out from the detailed grounds advanced by the complainant in Para 7

above is the view taken by the Authority that the Plot purchased by Complainant in the First Project from Respondent Nos. 1 to 3 is an agricultural land as there is no N.A. permission or otherwise for its development. It is further held that the same is not a real estate project as defined under Section 2(zn) and therefore is not liable to be registered under Section 3 of the Act.

The aforesaid view of the Authority is termed as erroneous and bizarre by learned Counsel for Complainant. It is consistently maintained and contended by Complainant that the Authority did not take cognisance of the fact that at the time of selling the said N.A. Plot, Respondent Nos. 2 and 3 had promised and agreed to obtain all necessary permissions for providing non-agricultural amenities in the subject Project as enumerated in the relevant documents viz. Brochures of the First Project, agreement for sale etc. Accordingly, and having regard to the amenities shown to be developed in the relevant documents, it is contended that the said project is a real estate project within the meaning and definition of Section 2(zn) of the Act. Being in an incomplete stage when the Act came into force on 1st May, 2017, it was therefore obligatory on Respondent Nos. 1 to 3 to perform their obligations under Section 11(4) of the Act by procuring all necessary permissions/ documents as mandated under Section 4 of the Act and register the said project under Section 3 of the Act. However, it is alleged that in the complaint proceedings lodged with the authority for registering the First Project, the said Respondents made oral and false submissions that they sold only agricultural land to the Complainant and never undertook to obtain N.A. or other



permissions nor have they taken any. The grievance of the Complainant is that instead of holding the Respondents liable for penalty under the Act for their failure to perform their obligations under Section 11(4) of the Act, the Authority accepted the oral submissions of the Respondents and came to the aforesaid erroneous conclusions without appreciating and applying the Sections 2, 3 and 4 of the Act in their proper perspective.

Associated grievance of the Complainant is that by holding the subject project not liable to be registered the Authority has held him disentitled to the benefits/reliefs of a registered real estate project by making erroneous observations in Para 13 of the order that in terms of the judgment of Hon'ble Bombay High Court (Supra), the provisions of the Act are applicable to the registered projects only. It is contended that the Act nowhere mentions that real estate project means registered real estate project only. This view therefore is contrary not only to provisions of the Act but also to the undertaking given by the Authority to Hon'ble Bombay High Court that complaints in relation to unregistered projects will be dealt with at par with the complaints in respect of the registered projects.

- ii) We have carefully perused and analysed the impugned order in the light of submissions of the parties. It is seen that the Authority has limited its examination to decide the question as to whether the First Project is a real estate project and liable to be registered under the Act. We find that Authority has taken due cognisance of the respective submissions of the parties as recorded in Paras 3 and 4 of the order. These appear to be



similar to submissions made by the respective parties during the instant proceedings on the controversy pertaining to the nature of lands involved in the First Project. After examination of facts submitted by parties and relevant provisions of the Act, the Authority observes in Para 5 of the order that there is no N.A. order or otherwise issued by any competent Authority for development of the parcel of land purchased by Complainant.

- iii) In the subsequent Paras of the order, the Authority has considered the provisions of relevant Sections 2, 3 and 4 of the Act. The Authority has recorded its considered view and conclusions in Paras 9, 10 and 11. A reference has been made to definition under Section 2(zn) of the Act in Para 8 of the order as per which the real estate project is explained to mean as 'development of..... land into plots or apartments as the case may be'. With reference to this, the Authority has observed in Para 9 that a real estate project necessarily requires development and permission for the said development has to be given by the competent Authority in accordance with the local law for the time being in force.

We find that by applying the above observations to the facts of the case in hand, the Authority observes in Para 10 of the order that the land under this Project is admittedly an agricultural land and till date no N.A. permission or order is granted by competent Authority to develop the same. Consequently, the Authority has held that the subject project is not a real estate project as defined under Section 2(zn) of the Act and the same cannot be registered under Section 3 of the Act.

In addition, before summing up its view in Para 12, the Authority has also observed in Para 11 of the order that unless



mandatory requirements under Section 4 of the Act are fulfilled by submitting layout plans, sanctioned plans, specifications of the project sanctioned etc. application for registration cannot be entertained by the Authority. As a sum total of observations, the Authority has held that since there were no N.A. or other permissions for development of the land relating to the First Project, it was an agricultural land and not a real estate project. Therefore, the same cannot be registered under the Act and in consequence dismissed the Complaint declining thereby the reliefs as prayed for by the Complainant.

- iv) We have given a thoughtful consideration to the relevant provisions of the Act. In our view the real estate project as defined under Section 2(zn) contemplates development of land into plots or apartments. In case of an agricultural land, as is the case in the instant appeal, to be designated as a real estate project, necessary permissions are required to effect the development of the said land. Compliance of such a requirement also seems essential from the perspective of provisions under Section 11(4) detailing therein the obligations of a promoter and Section 4 for mandating the requirements of certain documents/ permissions necessary for registration of the project under Section 3 of the Act. In this regard, we note that Complainant has utterly failed to establish that the said land had all necessary N.A. or other permissions for its development and for undertaking its registration as real estate project under the Act.

In fact, on a deeper scrutiny of the submissions on record by the Complainant, there appears to be an inherent and apparent inconsistency in the submissions made throughout by the Complainant before the Authority as well as this Tribunal. It is seen that on one hand Complainant contends that he purchased



N.A. Plot, on the other, he claims that Respondent Nos. 2 and 3 had promised to obtain N.A. and other permissions from the appropriate authorities but then they failed to do so.

The above submissions clearly suggest that the land purchased by Complainant was to become N.A. only after obtaining the N.A. permissions by the Respondent Nos. 2 and 3 as promised. It therefore inversely means that the said land was an agricultural land when purchased and remained so as no N.A. permission/order has so far been granted by any competent Authority for development of this land as has been rightly observed by the Authority in Paras 5/10 of the impugned order. This fact has not been negated by the Complainant by producing any such N.A. order or permission though, on the contrary Respondent Nos. 2 and 3 maintained throughout that they have not obtained any such permission and never promised also to perform such obligations while selling the agricultural land to Complainant.

- v) In above circumstances, in agreement with the Authority and limited to the facts of this case, it is concluded that land pertaining to the First Project continues to be an agricultural land in the absence of any N.A. orders for its development. Therefore, we find no illegality or infirmity as such in the view taken by the Authority to hold that the First Project is not a real estate project for the reasons stated in the impugned order and therefore the same is not liable to be registered under the Act.
- vi) Accordingly, we find no merit in the contentions of Complainant that the Authority has not appreciated and applied Sections 2, 3 and 4 of the Act in their proper perspective and has passed the impugned order based on oral submissions of Respondent Nos. 2 and 3. The contention that the order is passed without allowing



the Complainant to produce necessary documents on record such as agreement for sale, brochures etc. also holds no water as the Complainant has not been able to submit any documents to prove that the First Project had necessary permissions to be termed as real estate project.

- vii) The contention of the Complainant, that he has been denied reliefs under the Act by the Authority by taking erroneous view (in para 13 of the order) that provisions of the Act are applicable to the registered projects only, itself appears to be erroneous. Simply put, in our view, provisions of the Act shall apply to i) Registered projects, being liable to be registered and ii) projects liable to be registered but not registered (unregistered). However, in case a project is unregistered being not liable to be registered, as is the case in this appeal, provisions of the Act shall not apply to such a project. In such circumstances, since after due inquiry the First Project is held as not liable to be registered, no illegality is found to have been committed by the Authority in declining the reliefs sought by Complainant under Sections 12, 18 read with Sections 31, 59 and 71 of the Act.
- viii) In accordance with above observations, the contentions of the Complainant that the Authority has acted contrary to the provisions of the Act or to the undertaking given in the order dated 31st July 2018 passed by Hon'ble Bombay High Court in Writ Petition No.(L) 908 of 2017 are not found acceptable.

14. The fourth issue, as a part of the main controversy, requires us to consider as to whether the Second Project i.e. Lion's Valley is liable to be registered under the Act as contended by the Complainant. Without going further into the details of this project as submitted by the parties, it may be stated at the outset that this project has not been a subject



of scrutiny and inquiry before the Authority and the impugned order is completely silent on this. Copy of the complaint submitted on record by Complainant makes no reference to this project for consideration of the Authority. Opening Para of the order itself refers to the complaint filed by complainant with regard to Valvan Valley Project, Taluka Lonavala.

Respondent No. 8 to 10, linked allegedly by Complainant to development relating to this Project, have submitted that they neither got any notice nor they appeared in the complaint proceedings before the Authority. No specific material is also submitted by Complainant before us to show that his grievances regarding registration of this project have not been considered or decided by the Authority.

Having regard to the above facts, it may be noted that the Preamble and Section 44 of the Act provide for hearing of appeals from the decisions, directions or orders of the Authority or Adjudicating officers. As there is no decision, directions or order in the impugned order regarding this project, there can be no reasons or occasion to give rise to any grievance in this appeal. Under such circumstances, we refrain from dealing with the issues canvassed by the parties with reference to the Second Project for the first time in this appeal. Accordingly, without expressing any opinion on merits of the submissions made by the parties and without prejudice to the rights and contentions of the parties, we leave it to the parties or the Authority, as the case may be to take further steps, as may be thought appropriate, with regard to this Project.

15. In view of the foregoing discussion and observations, we do not find the grounds of challenge raised by complainant as valid and sustainable to merit interference with the impugned order and we accordingly answer the Fifth issue in the affirmative. In result, the appeal deserves to be dismissed. Considering our findings as above, we do not think it



proper to continue the interim order passed by this Tribunal on 20th December, 2018 beyond the period mentioned in the order below. Hence the following order:

ORDER

- i) The impugned order is upheld.
- ii) The appeal stands dismissed, to the extent it relates to the First Project i.e. the Valvan Valley Project.
- iii) The Authority and the parties are at liberty to take further appropriate steps in respect of the Second Project, i.e. Lion's Valley Project without prejudice to the rights and contentions of the parties.
- iv) The interim order dated 20th December 2018 of this Tribunal shall continue to be in effect till the period of Second appeal is over from the date of communication/uploading of this order.
- v) No costs.
- vi) The copy of this order be communicated to the Authority and the respective parties as required under Section 44(4) of the Act.


(S. S. SANDHU)


(INDIRA JAIN J.)